

REMARKS

The Non-final Office Action dated October 4, 2007, has been received and reviewed. Each of claims 1-21 stands rejected. Claims 1, 8, and 15 are amended as hereinabove set forth. Reconsideration of the present application in view of the proposed amendments and the following remarks is respectfully requested.

Rejections based on 35 U.S.C. § 102

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdeggal Brothers v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987). “The identical invention must be shown in as complete detail as is contained in the . . . claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 2 USPQ 2d 1913, 1920 (Fed. Cir. 1989). *See also*, MPEP § 2131.

Claims 1-3, 8-10, and 15-17 have been rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,651,775 to Walker et al. (hereinafter the Walker reference). As the Walker reference fails to describe, either expressly or inherently, each and every element as set forth in the rejected claims, Applicants respectfully traverse this rejection, as hereinafter set forth.

Independent claims 1 and 8 relate to a computer-implemented method and a computerized system for reducing the risk of adverse clinical events when administering multiple medications to a patient through a common attachment. Independent claim 15 relates to a computer-readable medium having computer-executable instructions for performing a method. Each of claims 1, 8, and 15 include associating a first medication with a first attachment; associating a second medication with the first attachment; and determining whether the

medications are compatible with one another when the first medication and the second medication are administered through the first attachment, and, if so, generating an alert.

By way of contrast, the Walker reference describes a method and system for delivering and monitoring medications. *See Walker reference*, Abstract. In Walker, an interface can display “pre-operative interview results, potential drug interactions, allergic reactions, physical profiling, [and] outcome analysis.” *See id.* at col. 3, lines 3-7. “[A]ppropriate hospital data bases and available customized data bases are accessed for information regarding possible allergic reactions, contraindications, [and] drug interactions” *See id.* at col. 9, line 66 – col. 10, line 2.

As such, the Walker reference does not describe a computerized method or system for reducing the risk of adverse clinical events when administering multiple medications to a patient through a common attachment. More specifically, the Walker reference fails to describe determining whether a first medication and a second medication are compatible with one another when administered through a common attachment, as recited in independent claims 1, 8, and 15. Rather, the Walker reference merely mentions displaying drug interactions and accessing data bases for possible drug interaction information. While the Walker reference discusses displaying and accessing potential drug interactions, it is respectfully submitted that the Walker reference does not disclose determining compatibility based on a first medication and a second medication *administered through a common attachment*.

Accordingly, it is respectfully submitted that the Walker reference fails to anticipate independent claims 1, 8, and 15. Accordingly, withdrawal of the 35 U.S.C. § 102(b) rejection of these claims is respectfully requested. Each of independent claims 1, 8, and 15 is believed to be in condition for allowance and such favorable action is requested. As claims 2-3,

9-10, and 16-17 depend directly from one of independent claims 1, 8, and 15, withdrawal of the 35 U.S.C. § 102(b) rejection of these claims is also requested.

Rejections based on 35 U.S.C. § 103

The basic requirements of a *prima facie* case of obviousness are summarized in MPEP §2143 through §2143.03. In order “[t]o establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success [in combining the references]. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant’s disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).” MPEP § 2143. Further, in establishing a *prima facie* case of obviousness, the initial burden is placed on the Examiner. “To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references. *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985).” *Id.* See also MPEP § 706.02(j) and § 2142. Recently, the Supreme Court elaborated, at pages 13-14 of *KSR*, it will be necessary for [the Office] to look at interrelated teachings of multiple [prior art references]; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by [one of] ordinary skill in the art, all in order to determine whether there was an apparent reason to

combine the known elements in the fashion claimed by the [patent application].” *KSR v. Teleflex*, 127 S. Ct. 1727 (2007).

Claims 4-7, 11-14, and 18-21 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,651,775 to Walker in view of Legal Precedent. Applicants submit that a *prima facie* case of obviousness for the rejection of claims 4-7, 11-14, and 18-21 under § 103 (a) has not been established.

As neither the Walker nor Legal Precedent, alone or in combination, teach or suggest all of the claimed features of amended independent claims 1, 8, and 15, from which claims 4-7, 11-14, and 18-21 depend, Applicants traverse the rejection. As discussed above, the Walker reference fails to teach or suggest all of the claimed features of the rejected independent claims 1, 8, and 15, as amended herein. Claims 1, 8, and 15 are believed to be in condition for allowance and such favorable action is requested. As claims 4-7, 11-14, and 18-21 depend, either directly or indirectly, from independent claims 1, 8, and 15, withdrawal of the 35 U.S.C. § 103 rejection of these claims is requested as well.

In addition, Applicants respectfully submit that the 35 U.S.C. § 103 rejection based in part on legal precedent is inappropriate. Under MPEP § 2144.04, “if the facts in a prior legal decision are sufficiently similar to those in an application under examination, the examiner may use the rationale used by the court.” The Office Action relies on MPEP § 2144.04(I) and recites that “matters relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art.” *See* Office Action, pg. 5 (citing *In re Seid*, 161 F.2d 229, 34 C.C.P.A. 1039, 1042 (CCPA 1947)).

In *In re Seid*, the Appellant’s application disclosed a hollow design of a human figure that fits onto the neck of a bottle to “give the impression of a human body.” *In re Seid*, 34

C.C.P.A. 1040. The Appellants contended that the shape and arrangement of the human body design, such as the arm arrangement, are novel over other prior art references. *See id.* at 1042. In response, the United States Court of Customs and Patent Appeals stated that “[t]hose matters . . . relate to ornamentation only and have no mechanical function whatsoever.” *See id.*

Applicants respectfully submit that the facts of *In re Seid* are not sufficiently similar to the present application. In contrast to the facts of *In re Seid*, the present application pertains to a computerized system and method. Further, in the present application, the representation of at least a portion of a human body and a graphical indicia, as recited in claims 4-7, 11-14, and 18-21, provide functionality by presenting an indication of the location of an attachment on a patient. Presenting an indication of attachment locations can increase the understanding of the patient’s treatment and lead to better care planning and outcomes. *See, e.g.*, Application, ¶ [0047]. In addition to other advantages, indicating attachment locations can reduce the likelihood of actions and omissions based on confusion among multiple attachments. *See id.* Such functionality in the present application is in stark contrast to the facts of *In re Seid* in which the Appellants merely emphasized the aesthetic aspects related to a specific shape and arrangement, e.g., arrangement of the arms, of the human figure.

Therefore, Applicants respectfully submit that the legal precedent of *In re Seid* is not appropriately applied in forming the 35 U.S.C. § 103 rejection of claims 4-7, 11-14, and 18-21. As the Office Action concedes, with respect to claims 4, 11, and 18, the Walker reference does not teach the method or system “wherein the first medication order is received by displaying a representation of at least a portion of a human body and a first graphical indicia indicative of the location of the attachment on the patient, and receiving a user selection of the first graphical indicia.” Further, with respect to claims 7, 14, and 21, the Office Action concedes

that the Walker reference does not teach the method or system “further comprising displaying a plurality of graphical indicia indicative of the locations of a plurality of attachments on the patient.” Accordingly, the Walker reference does not teach or suggest each and every element of claims 4, 7, 11, 14, 18, and 21 and, therefore, a *prima facie* case of obviousness has not been established with regard to those claims. Further, each of claims 5-6, 12-13, and 19-20 depends from one of independent claims 4, 11, and 18. Accordingly, each of these claims is allowable at least by virtue of its dependency from allowable claims 4, 7, 11, 14, 18, and 21. As such, withdrawal of the 35 U.S.C. § 103 rejection of claims 4-7, 11-14, and 18-21 is respectfully requested.

CONCLUSION

For at least the reasons stated above, claims 1-21 are now in condition for allowance. Applicants respectfully request withdrawal of the pending rejections and allowance of the claims. If any issues remain that would prevent issuance of this application, the Examiner is urged to contact the undersigned – 816-474-6550 or kfeimster@shb.com (such communication via email is herein expressly granted) – to resolve the same. It is believed that no fee is due, however, the Commissioner is hereby authorized to charge any amount required to Deposit Account No. 19-2112.

Respectfully submitted,

/Kelly T. Feimster/

Kelly T. Feimster
Reg. No. 57,781

KTF/tq
SHOOK, HARDY & BACON L.L.P.
2555 Grand Blvd.
Kansas City, MO 64108-2613
816-474-6550